

CRR(F)-274-2023 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRR(F)-274-2023 (O&M)
Date of Decision:-26.04.2023

Charanjit Kaur

.....Petitioner

Versus

Dayal Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Mohit Giri, Advocate for the petitioner.

ALOK JAIN, J. (Oral)

The present petition raises challenge to order dated 05.01.2023, whereby the application under Section 125 Cr.P.C filed by the petitioner has been dismissed, on the ground that the petitioner has failed to prove that she was the legally wedded wife of the respondent.

2. Learned counsel for the petitioner has vehemently argued that the birth certificate of the daughter Jasbir Kaur clearly records name of the respondent as father and also relies on the voter list, in which the name of the respondent is recorded as husband of the petitioner. Learned counsel for the petitioner has further argued that the petitioner is the estranged wife of the respondent and hence, there is no bar of maintaining a petition under Section 125 Cr.P.C and seek maintenance.

3. After hearing learned counsel for the petitioner at length, it transpires that admittedly the petitioner left the company of the respondent in the year 2003 and right upto 2019; she remained with some unknown

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person at Karnal, as she has not been able to demonstrate and disclose the name of the said person. The petitioner has also not been able to prove the date of marriage which is alleged to be 13.01.1988. Now, after 31 years, the petitioner has filed this application for maintenance which has been dismissed by the Court below.

4. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court of India in case titled as ***"Kamala and others Vs. M.R. Mohan Kumar, 2018(4) R.C.R. (Criminal) 894"***, to demonstrate that even if a man and a woman are not married but live together as a husband and wife and begets children and the birth certificates of the children clearly record the person as the father should be liable to pay the maintenance *"if he deserts her"*. He further relies upon the judgment of ***"Chanmuniya Vs. Virendra Kumar Singh Kushwaha and another, 2011(1) SCC 141"***, to substantiate his averments.

5. After considering the above, it is incumbent upon this Court to reproduce the provisions of Section 125 Cr.P.C, which reads as under:

The objective of this provision is very clear and the opening line states that:

"if any person having sufficient means neglects or refuses to maintain his wife, then the Magistrate upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife".

6. Admittedly in this case, there is no allegation lest proof that the petitioner was deserted by the respondent, even for the sake of presuming that the issue whether they were validly and legally married or

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not, even then, it was incumbent upon the petitioner to have proved that she was deserted and neglected and was not maintained, wherein, in the present case admittedly, since 2003, the petitioner had been maintaining herself separately and there is no iota of any communication also between the petitioner and husband for a long duration of 16 years.

7. The petitioner has vaguely stated that only once in the year 2011, she visited the alleged matrimonial home, but was thrown out of the matrimonial house, but there is no evidence *qua* the same much less not even a Police report or a complaint. The purpose of Section 125 Cr.P.C is to support the wife and the children and in fact, the parents also who may not be in the condition to maintain themselves, due to the act and conduct of the person or due to any other discord.

8. However, in the present case, the fact that the petitioner conveniently and happily chose to stay separately for a continuous period of 16 years without even a whisper of having any difficulty or not been able to maintain herself, but now at this stage, she is trying to abuse the process of law to the detriment of the respondent which cannot be permitted. Accordingly, I do not find any infirmity in the order passed by the Court below. Hence, the present petition stands dismissed.

9. Pending miscellaneous application(s), if any, stands disposed of.

(ALOK JAIN)
JUDGE

April 26, 2023

Parul

Whether speaking/reasoned:-
Whether Reportable:-

Yes
Yes